

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2015-094016

08/28/2015

HONORABLE JAMES D. SMITH

CLERK OF THE COURT

G. Clark

Deputy

IN RE THE MATTER OF
BRIAN WILLIAM TANNER

BRIAN WILLIAM TANNER
15701 E CHAPALA ST
GILBERT AZ 85234
HEATH H MCWHORTER

AND

HOLLY JEANNETTE TANNER

GEOFF MORRIS

CONCILIATION SERVICES-SE
FAMILY SUPPORT SERVICES-CCC
OFFICE OF PUBLIC DEFENSE
SERVICES-CCC
TASC - MESA

MINUTE ENTRY

Prior to the commencement of today's proceedings, Petitioners exhibits 1 through 37 and Respondent's exhibits 38 through 78 are marked for identification.

Courtroom SEF 404

9:58 a.m. This is the time set for Temporary Orders Hearing regarding the *Motion for Temporary Orders for Legal Decision Making and Physical Custody and for Parenting Time* filed by Petitioner on July 7, 2015 and Respondent's *Response to Petitioner's Motion for Temporary Orders and Respondent's Cross-Motion for Temporary Orders* filed by counsel for Respondent on August 12, 2015. Petitioner, Brian William Tanner, is present with above-named counsel, Heath H. McWhorter. Respondent, Holly Jeannette Tanner, is present with above-named counsel, Geoff Morris.

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A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Brian William Tanner, Jolly Jeannette Tanner, Carol Cluff, William W. Tanner and Phyllis Anne Tanner are sworn.

Petitioner invokes the Rule of Exclusion of Witnesses (Arizona Rule of Evidence 615). The witnesses are directed to step outside the courtroom until such time as they are called upon to testify. The witnesses are admonished by the Court that no witness shall discuss his or her own testimony, or other witnesses' testimony, until he or she has been called and released as a witness.

Discussion is held.

By stipulation of the parties, Petitioner's exhibits 5, 8, 11, 12, 14, 1, 16, 19, 21, 22, 23, 30, 31 and Respondent's exhibits 38 through 78 are received in evidence.

Having been previously sworn, Brian Tanner now testifies.

Petitioner's exhibits 2, 4, 36 are received in evidence.

The witness is excused.

Having been previously sworn, Holly Jeannette Tanner now testifies.

The witness is excused.

11:13 a.m. Court stands at recess.

11:28 a.m. Court reconvenes with all parties present.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

IT IS ORDERED appointing a court advisor to investigate the case and make recommendations to the Court regarding the Mother's drug use and the allegation of Father's prior domestic violence. The appointment shall be fully set forth by separate minute entry.

IT IS FURTHER ORDERED Petitioner shall be responsible for and pay 100 percent of the Court-Appointed Advisor's fees, subject to reallocation until further order of the Court. All fees shall be paid in advance as determined by the Office of Public Defense Services.

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On a temporary basis,

IT IS ORDERED that Mother will resume treatment with Dr. Sivak. The contact with Dr. Sivak shall be done no later than close of business Monday, August 31, 2015. Father shall pay any copayments to the extent that any arise with Dr. Sivak. Mother shall disclose her complete pharmacologic history to Dr. Sivak, both what is in the state records that were submitted in the exhibits and any other prescription or illicit drugs. Father's counsel shall have a simultaneous copy of that transmission to Dr. Sivak as well. The submission shall be confidential to the attorney's only. In the event that Father is no longer represented, Father shall receive the copy and is required to keep all information held therein confidential.

IT IS ORDERED no later than close of business today Mother must appear for a hair follicle test at a location of TASC as indicated on the TASC Referral Form.

If a party is unable to provide a hair sample to TASC, they shall immediately notify this Court and a referral to another lab will be provided.

IT IS FURTHER ORDERED:

A. Agency. Mother's hair follicle test shall be conducted at a location of TASC, Inc., the main office of which is at 2234 North 7th Street, Phoenix, Arizona, 602-254-7328. Other locations are listed on the TASC referral form and may be viewed at www.tascaz.org.

B. First Test. Mother shall report to TASC no later than 5:00 p.m. today for her first test.

C. Scope. Mother shall undergo a drug test (Screen "B") for each test ordered herein.

D. Cooperation. Mother shall cooperate fully as reasonably required by the testing agency to comply with this Order, including:

1. Mother shall provide such samples as are reasonably required by the testing agency to comply with this order.
2. Mother shall timely report for testing and provide samples as directed by the testing agency.
3. Mother shall present photo identification to the testing agency at the time of each test.

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4. Mother shall sign and deliver such forms of consent, authorization and release of test results as shall be reasonably required by the testing

E. Cost. Mother shall pay the cost of her testing (\$65.00 per test) in money order or cashier's check at the time of testing.

F. Frequency & Duration. Mother shall be randomly tested one time. Testing shall then be complete.

G. Positive/Diluted/Missed Test. All parties are advised that the failure, neglect or refusal to participate in testing, or providing a diluted test sample at the time of testing, may be considered an admission by the party that the testing, if properly conducted, would have revealed the use of the substance(s) tested for, which finding is contrary to the best interest of a child. Certain prescription medications may cause a positive drug test result. Parties who are required to drug test are expected to provide proof to the court of prescriptions and documentation from health care providers regarding the lawful possession and use of those medications.

H. Reporting. The parties are hereby advised that test results ARE NOT confidential and will be filed in the Court file upon receipt by the Court. The results of each test shall be reported directly to counsel for both parties, or directly to the parties at the addresses provided by the parties to the testing agency, if unrepresented by counsel. The testing agency shall also provide this Court with a Monthly Drug Test Summary Report.

IT IS ORDERED that Mother shall undergo random drug testing on the following basis:

A. Agency. Mother's random drug testing shall be conducted at a location of TASC, Inc., the main office of which is at 2234 North 7th Street, Phoenix, Arizona, 602-254-7328. Other locations are listed on the TASC referral form and may be viewed at www.tascaz.org.

B. First Test. Mother shall report to TASC no later than 5:00 p.m. today for her first test.

C. Scope. Mother shall undergo a full spectrum substance and drug test (Screen "A") for each test ordered herein.

D. Cooperation. Mother shall cooperate fully as reasonably required by the testing agency to comply with this Order, including:

1. Mother shall provide such samples as are reasonably required by the testing agency to comply with this order.

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2. Mother shall timely report for testing and provide samples as directed by the testing agency.

3. Mother shall present photo identification to the testing agency at the time of each test.

4. Mother shall sign and deliver such forms of consent, authorization and release of test results as shall be reasonably required by the testing

E. Cost. Mother shall pay the cost of her testing (\$25.00 per test) in money order or cashier's check at the time of testing.

F. Frequency & Duration. Mother shall be randomly tested not less than once per week until further order of the Court.

G. Positive/Diluted/Missed Test. In the event that Mother tests positive on any test, misses a random test, or provides a diluted test sample on any test, the cycle and frequency of testing set forth in paragraph F above, shall be started again with weekly tests. All parties are advised that the failure, neglect or refusal to participate in testing, or providing a diluted test sample at the time of testing, may be considered an admission by the party that the testing, if properly conducted, would have revealed the use of the substance(s) tested for, which finding is contrary to the best interest of a child. Certain prescription medications may cause a positive drug test result. Parties who are required to drug test are expected to provide proof to the court of prescriptions and documentation from health care providers regarding the lawful possession and use of those medications.

H. Reporting. The parties are hereby advised that test results ARE NOT confidential and will be filed in the Court file upon receipt by the Court. The results of each test shall be reported directly to counsel for both parties, or directly to the parties at the addresses provided by the parties to the testing agency, if unrepresented by counsel. The testing agency shall also provide this Court with a Monthly Drug Test Summary Report.

Issued: Court Ordered Substance Abuse Testing form

IT IS FURTHER ORDERED that if Mother receives any new prescriptions or resumes any prescription she testified today to no longer using, she shall make Father aware within 24 hours.

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IT IS FURTHER ORDERED that Father shall return the mailbox key back to mother. Mother shall forward any of Father's mail to him immediately without tampering with it in any way.

IT IS FURTHER ORDERED that neither party shall remove the child from school absent any emergency or previously scheduled medical or dental appointment. Any medical or dental appointments shall be disclosed to the other parent in advance.

IT IS FURTHER ORDERED that Father shall continue to pay the rent and utilities at the home where Mother is residing. If the SRP or any electric bill exceeds \$500 per month, Mother shall be responsible for that excess. Father shall bring all utilities current within one week of this hearing to the extent there is anything outstanding.

IT IS FURTHER ORDERED that Father shall continue paying Mother's car, car insurance and medical insurance.

IT IS FURTHER ORDERED that the parties shall not discuss this litigation with the children in any way. The Court admonishes both parties that if they disclose any details of this dispute of it could affect this Court's final decision regarding legal decision making authority. The parties are also admonished that they are to advise any third party to not discuss any matters of this litigation to the children. If either party finds that is happening, they shall remove the child from that situation.

IT IS FURTHER ORDERED awarding the parties joint legal decision making and parenting time on a 5-2-2-5 schedule with the parties continuing their current arrangement. The parties shall split the upcoming fall break equally. Exchanges shall continue to be at the children's school on school days or at the Home Depot on Germann and Power during non-school days.

IT IS FURTHER ORDERED the parties shall have a daily communication with the children while they are in the other parent's care by either phone, Skype or FaceTime. The frequency in which the children may contact the absent parent is not limited.

IT IS FURTHER ORDERED that Father shall pay to Mother as and for temporary child support the amount of \$705 per month by income withholding order effective September 1, 2015. Father shall continue to pay the health insurance for the minor children.

LET THE RECORD REFLECT that an Income Withholding Order is initiated electronically by the above-named deputy clerk. Confirmation #443766.

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IT IS FURTHER ORDERED that at any time an *Income Withholding Order* is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the instructions for making support payments through the Clearinghouse attached hereto.

If payments are made directly to the person who is to receive the support, the payments may be considered a gift and no credit will be given towards the support obligation.

Any change in the paying party's employment and any change in the residential address of either party **must** be submitted to the Clerk's office, in writing, within ten (10) days of the change [A.R.S. § 25-322(C)]. Failure to notify the Clerk's office of any change may be considered contempt of Court.

IT IS FURTHER ORDERED that there shall be no spousal maintenance awarded at this time due to Father paying for Mother's rent, utilities, car, car insurance and health insurance.

Based on the disparities in income,

IT IS FURTHER ORDERED that on an interim basis, Father shall pay \$3750 for Mother's attorney's fees and costs, to be paid within 2 weeks from today.

IT IS FURTHER ORDERED that if another person moves into either parent's residence, that parent will notify the other parent within 24 hours.

IT IS FURTHER ORDERED setting this matter for Telephonic Status Conference on **November 5, 2015 at 10:00 a.m. (Time allotted: 30 minutes)** before the Honorable James D. Smith in this Division. Counsel for Mother shall initiate the call and contact this Division at 602-372-5945 no later than five minutes prior to the start of the Conference.

There being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked, or to their written designee.

IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit Release Form.

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IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ HONORABLE JAMES D. SMITH

HONORABLE JAMES D. SMITH
JUDGE OF THE SUPERIOR COURT

12:03 p.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

BRIAN WILLIAM TANNER: Non IV-D Payment Instructions, Current Employer Information